

RCE/160 ♀  
3, OMB 0651-0031



**REQUEST  
FOR  
CONTINUED EXAMINATION (RCE)  
TRANSMITTAL**

**Address to:**  
**Mail Stop RCE**  
**Commissioner for Patents**  
**P.O. Box 1450, Alexandria, VA 22313-1450**

<i>Application Number</i>	09/780,503
<i>Filing Date</i>	February 9, 2001
<i>First Named Inventor</i>	Sethi et al.
<i>Art Unit</i>	1654
<i>Examiner Name</i>	Louise N. Leary
<i>Attorney Docket No.</i>	11520.0228

**This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.** Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** NOTE: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed, unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

## 2. Miscellaneous

a.  Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b.  Other

**3. Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

a. ■ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 08-2442

i. ■ RCE fee required under 37 CFR 1.17(e)

ii. □ Extension of time fee (37 CFR 1.136 and 1.17)

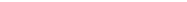
iii. □ Other \_\_\_\_\_

b. ■ Check in the amount of \$375.00 enclosed

c. □ Payment by credit card (Form PTO-2038 enclosed)

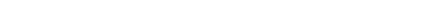
**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

**SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED**

Name (Print/Type)	Ranjana Kadle	Registration No. (Attorney/Agent)	40,041
Signature		Date	August 6, 2003

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	Susan L. Eick		
Signature		Date	August 6, 2003

08/11/2003 TTRAN1 00000006 09780503  
FC:2801 375,00 OP

Application Number 9780,503

**TECH CENTER 1600/2900**  
**FEE TRANSMITTAL**  
**for FY 2003**

Effective 01/01/2003. Patent Fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$ 555.00)

Attorney Docket Number 11520.0228

RECEIVED  
AUG 12 2003  
TECH CENTER 1600/2900**METHOD OF PAYMENT (check all that apply)** Check  Credit Card  Money Order  Other  None Deposit Account: Deposit Account Number: 08-2442  
Deposit Account Name: Hodgson Russ LLP

The Director is hereby authorized to (check all that apply)

Charge fee(s) indicated below  
 Charge any fee deficiencies or credit any overpayments  
 Charge any additional fees during pendency of this application.  
 Charge fees indicated below, except for the filing fee to the above-identified deposit account

**FEE CALCULATION (continued)**

3. ADDITIONAL FEES					
<u>Large Entity</u>		<u>Small Entity</u>			
Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	
1051	130	2051	65	Surcharge - late filing fee or oath	\$
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	\$
1053	130	1053	130	Non-English specification	\$
<b>FEE CALCULATION</b>		1812	2,520	For filing a request for <i>ex parte</i> reexamination	\$
<b>1. BASIC FILING FEE</b>		1804	920*	Requesting Publication of SIR prior to Examiner Action	\$
<u>Large Entity</u> <u>Small Entity</u>		1805	1,840*	Requesting Publication of SIR after Examiner Action	\$
Fee Code (\$)	Fee Code (\$)	Fee Paid			
1001 750	2001 375	Utility filing fee	\$ 1251	110	Extension for reply within first month
1002 330	2002 165	Design filing fee	\$ 1252	410	Extension for reply within second month
1003 520	2003 260	Plant filing fee	\$ 1253	930	Extension for reply within third month
1004 750	2004 375	Reissue filing fee	\$ 1254	1,450	Extension for reply within fourth month
1005 160	2005 80	Provisional filing fee	\$ 1255	1,970	Extension for reply within fifth month
<b>SUBTOTAL (1)</b>		\$ 0	1401	320	Notice of Appeal
<b>2. EXTRA CLAIM FEES FOR UTILITY/REISSUE</b>		Fee Paid			
Extra Fee from Claims below		1402	320	Filing a brief in support of an appeal	\$
Total Claims / / -20** = / / x / / =		\$ 1403	280	Request for oral hearing	\$
Independent Claims / / - 3** = / / x / / =		\$ 1451	1,510	Petition to institute a public use proceeding	\$
Multiple dependent / / x / / =		\$ 1452	110	Petition to revive - unavoidable	\$
<u>Large Entity</u> <u>Small Entity</u>		1453	1,300	Petition to revive - unintentional	\$
Fee Code (\$)	Fee Code (\$)	Fee Description	1501	1,300	10 advance copies Utility issue fee (or reissue)
1202 18 2202 9	Claims in excess of 20	1502	470	Design issue fee	\$
1201 84 2201 42	Independent claims in excess of 3	1503	630	Plant issue fee	\$
1203 280 2203 140	Multiple dependent claim if not paid	1460	130	Petitions to the Commissioner	\$
1204 84 2204 42	**Reissue independent claims over original patent	1807	50	Processing fee under 37 CFR 1.17(g)	\$
1205 18 2205 9	**Reissue claims in excess of 20 and over original patent	1806	180	Submission of Information Disclosure Statement	\$ 180
<b>SUBTOTAL (2)</b>		\$ 0	8021	40	Recording each patent assignment per property (times number of properties)
<b>SUBMITTED BY:</b> Ranjana Kadle Reg. No. 40,041		1809	750	2809	375 Filing a submission after final rejection(37 CFR 1.129(a)) \$
<b>SIGNATURE</b> <i>Ryan K.</i>		1810	750	2810	375 For each add'l invention to be examined(37 CFR 1.129(b)) \$
DATE: August 6, 2003 Telephone: (716) 848-1628		1801	750	2801	375 Request For Continued Examination (RCE) \$ 375
		1802	900	1802	900 Request for Expedited Examination of a design application \$
<b>Other fee (specify)</b>					
*Reduced by basic filing fee paid					
<b>SUBTOTAL (3)</b>					
\$ 555					



I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450, Alexandria,  
Virginia 22313-1450, on August 6, 2003

Susan L. Eick

Name

Susan L. Eick

Signature

August 6, 2003

Date of Signature

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AUG 12 2003 J.G.J  
8/4/03

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Sethi et al.

Examiner: Louise N. Leary

Serial No.: 09/780,503

Art Unit: 1654

Filed: February 9, 2001

For: A Method for Detecting Bacterial Exacerbations of Chronic Lung Disease

## RESPONSE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated May 13, 2003, Applicants respond as follows.

Claims 1-20 are pending. In an office action dated May 13, 2003, the Examiner has rejected several claims as being unpatentable under 35 USC 103 over Tsang et al. (Chest, 117:420-426, 2000). In a previous response, Applicants had submitted evidence to indicate receipt of this issue of the journal Chest in the State University of Buffalo library after the priority date of the instant application. However, the Examiner does not accept this to constitute sufficient evidence to remove the Tsang et al reference as prior art.

Applicants herewith file a request for continued examination. With respect to the Examiner's rejections, Applicants will respond to each point made by the Examiner:

Response to Office Action

(1) Tsang et al. manuscript was accepted on July 15, 1999.

The date of public availability of a published article is when the particular issue containing the article is published. The mere fact that an article is submitted for publication or accepted by the journal for publication does not constitute public disclosure or availability. Reviews by journals are deemed to be confidential and do not rise to the level of public disclosure. Therefore, the date when the article was accepted for publication is irrelevant.

(2) Sale or offer for sale by an independent third party ("National Sales Representative")

The Examiner contends that a sale or an offer for sale was made by an independent sales representative more than one year before the earlier priority date of this application i.e., earlier than February 19, 1999. It is not clear what the basis of the Examiner's contention is. The "National Sales Representatives" on page A5 of the CHEST journal refers to the sales representatives of the journal. As discussed above, review of articles by journals are conducted under confidentiality and are not available to the public until actual publication of the particular issue. Accordingly, it is not clear to the Applicants how the journal CHEST having a sales representative means that an offer for sale or sale of the present invention occurred more than one year prior to the of the filing date of the provisional application for the present invention. The Examiner is respectfully requested to clarify her position.

(3) Date of receipt of Tsang et al. by SUNY library does not represent the dates at which all subscribers received copies.

Applicants herewith submit a Rule 1.131 declaration by one of the inventors, Dr. Sanjay Sethi, indicating that the present invention was complete prior to February 2000, the publication date of Tsang et al.

(4) Tsang et al. was published and distributed during the first two weeks of February 2000.

As mentioned under (3), Applicants herewith submit a Rule 1.131 declaration indicating that the invention was complete prior to February 2000.

(5) Applicants have not submitted a declaration swearing behind the Tsang et al. reference.

As discussed under (3) and (4), Applicants with this response herewith submit the Rule 1.131 declaration swearing behind the Tsang et al. reference.

**Conclusion**

Based on the above arguments and amendments, Applicants believe that claims 1-20 are now in a condition for allowance and therefore respectfully request the Examiner to allow all the claims.

This response is being filed within 3 months of the date of the Office Action and therefore it is believed that no extension fee is due. However, if that is incorrect, any fee due may be charged to Deposit Account No. 08-2442.

Respectfully submitted,  
HODGSON RUSS LLP

By   
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Dated: August 6, 2003